

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

*In the Matter of* )  
 )  
Sinclair Broadcast Group, Inc. )  
Cunningham Broadcasting Corporation )  
Deerfield Media (Baltimore), Inc. )  
 )  
*and Television Stations* )  
 )  
WBFF(TV), Baltimore, MD )  
WNUV(TV), Baltimore, MD )  
WUTB(TV), Baltimore, MD )  
 )

**SINCLAIR BROADCAST GROUP, INC.’S OPPOSITION TO  
THE PETITION TO TERMINATE MEDIA BUREAU INVESTIGATION  
AND REQUIRE EARLY FILING OF RENEWAL APPLICATIONS**

Sinclair Broadcast Group, Inc. (“Sinclair”), through counsel, hereby opposes Mr. Ihor Gawdiak’s Petition to Terminate Media Bureau Investigation and Require Early Filing of Renewal Applications.” Mr. Gawdiak has no authority to dictate to the Media Bureau how it may conduct its investigations. He also lacks standing to seek the extraordinary measure of requiring an early license renewal filing and, critically, fails to allege any substantial and material question of fact that would constitute a “serious” or “compelling” reason to require Sinclair’s Maryland licensee subsidiary to file a renewal application for station WBFF(TV) before it would otherwise be due on June 1, 2020. The Petition should accordingly be promptly dismissed or denied.

**I. STANDARD OF REVIEW**

Section 1.41 of the Commission’s Rules sets forth the pleading standard for informal requests for Commission action. Such requests are to state (i) the facts relied upon, (ii) the relief sought, (iii) the statutory and/or regulatory provisions pursuant to which the request is filed, and

(iv) the interest of the person submitting the request.<sup>1</sup> Sinclair has found no statutory or regulatory basis for a third-party to demand that the Commission or its Bureaus terminate a pending investigation of another party, and the Petition cites none.

Section 73.3539(c) of the Commission’s Rules permits the Commission to require an early renewal application filing only where the renewal application is “essential to the proper conduct of a hearing or investigation[.]”<sup>2</sup> Third parties do not have a right under either the Commission’s Rules or the Communications Act to invoke the “extraordinary, discretionary action of calling for the early filing of a renewal application.”<sup>3</sup> The Commission may, however, accept such filings as informal requests for Commission action under Section 1.41.

Although such filings are treated as “informal requests,” the Commission rightly imposes on filers seeking to require early renewal application filings the same “high burden of pleading” required of formal petitions to deny a license renewal application.<sup>4</sup> The requester must allege a “substantial and material question of fact” regarding whether the station has served the “public interest, convenience, and necessity” and must support its allegations with “affidavits from

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<sup>1</sup> 47 C.F.R. § 1.41. While styled as a “petition,” Mr. Gawdiak’s filing is an informal request to the Commission. The Commission has historically treated similar “petitions,” such as those seeking to require an early renewal application filing, as “informal requests for Commission action” under Section 1.41 of the Commission’s Rules, to which the filing deadlines set forth in Section 1.45 of the Rules for formal petitions to deny do not apply. *See Leflore Broadcasting Company, Inc.*, 36 FCC 2d 101, ¶ 1 n.2 (1972) (“*Leflore Broadcasting*”). For administrative convenience and to mitigate any confusion that may otherwise accompany such an open-ended response timeframe, without conceding the applicability of such rules to Mr. Gawdiak’s filing, Sinclair hereby submits its response consistent with the deadlines set forth in Section 1.45, as computed by Section 1.4(h).

<sup>2</sup> 47 C.F.R. § 73.3539(c).

<sup>3</sup> *See, e.g., Greater Portland Broadcasting Corporation*, 3 FCC Rcd 1953, 1954 (1988) (“*Greater Portland*”) (rejecting request to require early renewal application filing).

<sup>4</sup> *Id.* at 1954.

persons with personal knowledge.”<sup>5</sup> The Commission will grant a request calling for early renewal application filing “only for ‘serious’ or ‘compelling reasons’” and appropriately has done so on strikingly few occasions.<sup>6</sup>

## **II. THE PETITION SHOULD BE DISMISSED BECAUSE MR. GAWDIAK LACKS STANDING**

A petitioner calling for an early license renewal application filing must have standing as a party in interest to object to such renewals in the ordinary course.<sup>7</sup> To establish party-in-interest standing to challenge a license renewal application, “a petitioner must allege facts sufficient to demonstrate that grant of the application would cause it to suffer a direct injury” that is both “concrete and particularized” and “actual or imminent, not conjectural or hypothetical.”<sup>8</sup> The petitioner must also demonstrate that the alleged injury can be traced to the challenged action and that such injury would be redressed by the relief sought.<sup>9</sup> Such factual allegations must be supported by an affidavit of a person with personal knowledge of the facts.<sup>10</sup> Mr. Gawdiak fails to satisfy any of these requirements and therefore lacks standing.

The Petition does not allege any facts that demonstrate that the investigation or renewal of WBFF’s license would cause Mr. Gawdiak to suffer direct injury. The Petition instead repeats baseless allegations plucked from the Sinclair-Tribune merger docket and mischaracterizes the

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<sup>5</sup> See *id.* (incorporating 47 USC § 309(d) standard for formal petitions to deny applications filed pursuant to 47 USC § 308); see also *Heritage-Wisconsin Broadcasting Corp.* 8 FCC Rcd 5607, 5613 (1993) (denying request to require early renewals where petitioners “failed to show compelling reasons and to raise a substantial and material question of fact.”).

<sup>6</sup> *Greater Portland* at 1954; see also *Sioux Empire Broadcasting Co.*, 9 FCC2d 683, 684 (1967).

<sup>7</sup> *Greater Portland* at 1954.

<sup>8</sup> See, e.g., *Applications of AT&T Mobility Spectrum LLC*, Memorandum Opinion and Order, 27 FCC Rcd 16459, 16465 ¶ 16 (2012); *Wireless Co., L.P.*, Order, 10 FCC Rcd 13233, 13235 ¶ 7 (WTB 1995), citing *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972); see also *New World Radio, Inc. v. FCC*, 294 F.3d 164 (D.C. Cir. 2002).

<sup>9</sup> *Id.*

<sup>10</sup> 47 U.S.C. § 309(d)(1), 47 C.F.R. § 1.939(d).

Hearing Designation Order (“HDO”) issued in connection therewith and other Commission precedent, and fails to allege that any of those allegations, if true, would cause him to suffer direct injury. Nor does the Petition identify a cognizable injury. Rather, the Petition is premised on the belief that an early license renewal application filing and termination of the investigation is necessary to preserve Mr. Gawdiak’s “right to participate in a full hearing on the matters raised in the HDO.”<sup>11</sup> But given that Mr. Gawdiak did not file a petition to deny the merger applications, was not named as a party to the HDO, and did not petition to become a party to the HDO or otherwise previously indicate any cognizable interest in the proceeding, Mr. Gawdiak never had any “right” to participate in that hearing. Even if he had, that hearing was terminated on March 5, 2019, and, in any event, had nothing to do with station WBFF.

Critically, the declaration attached to the Petition purporting to support Mr. Gawdiak’s standing does not support any of the allegations contained in the Petition with personal knowledge. It asserts only that Mr. Gawdiak is a resident of Columbia, Maryland, that he regularly watches WBFF and other Baltimore stations, and that he intends to file a petition to deny WBFF’s license renewal application (which, Sinclair notes, Mr. Gawdiak can do in the ordinary course if he so chooses).

Mr. Gawdiak has therefore wholly failed to demonstrate standing to object to WBFF’s license renewal application in the ordinary course, let alone to file a request to require an early license renewal filing or to terminate an investigation. The Petition can—and should be—dismissed on this basis alone.

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<sup>11</sup> Petition at 2.

### III. THE PETITION FALLS SHORT OF THE COMMISSION'S "HIGH BURDEN OF PLEADING"

Even if Mr. Gawdiak had established standing, which he did not, his request should be denied because the Petition fails to allege any substantial or material question of fact regarding whether WBFF has served the public interest, fails to identify any serious or compelling reason to require an early renewal application filing, fails to identify any regulatory or statutory basis to request termination of a Media Bureau investigation and (as discussed above) is not supported by an affidavit made with personal knowledge. The Petition does not allege any facts with respect to WBFF, but instead attempts to use the Commission's decision to designate for administrative hearing certain unrelated applications filed in connection with Sinclair's proposal to acquire Tribune Media Company as a basis to initiate early renewal proceedings.<sup>12</sup> Rather than raise any new allegations, the Petition contends only that the issues raised in the HDO "should be addressed as part of Sinclair's license renewal application process[]" <sup>13</sup> and mischaracterizes the June 25 letter as an investigation into Sinclair's "qualifications to remain a licensee."<sup>14</sup>

In so doing, the Petition ignores that the HDO did not raise questions of fact concerning Sinclair's fitness to hold its current licenses or to acquire licenses in the future.<sup>15</sup> Rather, the HDO designated for hearing only Sinclair's pending applications to acquire Tribune's licenses (and not any of Sinclair's current licenses). The Commission noted in the HDO that its policy is to "limit assignments, transfers, and new acquisitions *only where there has been a determination*

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<sup>12</sup> See *Applications of Tribune Media Company (Transferor) and Sinclair Broadcast Group, Inc. (Transferee) for Transfer of Control of Tribune Media Company and Certain Subsidiaries, WDCW(TV) et al. and for Assignment of Certain Licenses from Tribune Media Company and Certain Subsidiaries*, MB Docket No. 17-179, FCC 18-100 (rel. July 19, 2018) ("HDO").

<sup>13</sup> Petition at 2.

<sup>14</sup> Petition at 6.

<sup>15</sup> HDO at 11 n.75.

at the time of designation that allegations warranting the designation of the original facility also bear on the operation of other facilities”<sup>16</sup> and, importantly, limited this determination to hold in abeyance only applications related to the proposed Sinclair-Tribune transaction.<sup>17</sup> Because Sinclair’s fitness to hold its current licenses, including the license of WBFF, was not at issue in the now-terminated hearing and because the Petition presents no new facts to support any such allegations, no harm results from reviewing the WBFF’s license renewal in the ordinary course.

The cases cited in the Petition do not support its request to require an early license renewal application filing.<sup>18</sup> Rather, they both involve comparative hearing policies that have no bearing on Sinclair’s licenses. The cases are therefore entirely inapposite.

Lastly, the filing of a legally and factually unsupported informal request does not make Mr. Gawdiak a “party within the meaning of the Ex Parte rules” so as to entitle him to “any communications between Sinclair . . . [and] the Media Bureau or the Commission concerning the designated issues.”<sup>19</sup> Acceptance of the Petition’s baseless assertion would invite every curious

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<sup>16</sup> *Id.* (emphasis added).

<sup>17</sup> HDO at 2. While the ALJ suggested that the Commission *may* find, in some cases, that misrepresentation and lack of candor have bearing on a licensee’s basic character qualifications, the same can be said of “any violation of any provision of the [Communications] Act, or of [the FCC’s] Rules or policies, as possibly predictive of future conduct, and thus, possibly raising concerns over the licensee’s future truthfulness and reliability, without further differentiation.” *Character Policy Statement*, 102 FCC2d 1179 at 1209-10 (1986). Of course, not every allegation of misrepresentation or violation of the Act or rules constitutes a “compelling reason” to require early license renewal application filings.

<sup>18</sup> Petition at 6 (citing *New South Media Corp. v. FCC*, 685 F.2d 708 (D.C. Cir. 1992) (holding that FCC cannot close out prospective competitors where passage of time during court appeal from disqualification of licensee brought the disqualified licensee’s licenses beyond or very close to the end of their three-year terms)); *see also* Petition at 7 (citing *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945) (holding that under comparative hearing rules, where the Commission has before it two applications for station licenses or construction permits which are mutually exclusive and grants one without a hearing and sets the other for hearing, the loser is improperly deprived of hearing to which he is entitled)).

<sup>19</sup> Petition at 7 (citing 47 C.F.R. § 1.1202(d))

observer to abuse the Commission’s filing processes. The Petition does not provide any reason to believe that Mr. Gawdiak has any personal knowledge of any facts that would enable him to meaningfully contribute to the Bureau’s inquiry. In any event, the Commission and its Bureaus have broad authority to conduct confidential investigations, and communications are exempt from *ex parte* requirements where disclosure would interfere with an investigation and the communications were requested by the Commission or staff for the clarification or adduction of evidence.<sup>20</sup>

#### IV. CONCLUSION

For the foregoing reasons, Sinclair opposes the Petition and respectfully requests that it promptly be dismissed or denied in full.

Respectfully submitted,

/s/ Miles S. Mason

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<sup>20</sup> 47 CFR § 1.1204(a) (Exempt *ex parte* presentations); *see also University of San Francisco*, 30 FCC Rcd. 10530 (2015) (“Petitioners’ suggestion that the settlement discussions leading to the Consent Decree violated the Commission’s *ex parte* rules lacks merit. Those discussions fall within the exception to the general prohibition of *ex parte* communications in restricted proceedings for communications ‘requested by (or made with the advance approval of) the Commission or staff for the clarification or adduction of evidence or for the resolution of issues, including possible settlement.’”) (citing *New York State Department of Law v. F.C.C.*, 984 F.2d 1209, 1217-18 (D.C.Cir.1993)).

**CERTIFICATE OF SERVICE**

I hereby certify that on August 1, 2019, true and correct copies of the foregoing Opposition were filed electronically and sent via email to the following:

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